

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALPHA CELLULAR TELEPHONE COMPANY, A	)	
FLORIDA GENERAL PARTNERSHIP	)	
	)	CASE NO.
	)	93-170
	)	
ALLEGED VIOLATION OF KRS 278.020	)	

O R D E R

On June 8, 1993, Alpha Cellular Telephone Company, a Florida general partnership ("Alpha Cellular") filed a proposed Settlement Agreement, a copy of which is attached hereto and incorporated herein as Appendix A. The settlement expresses Staff and Alpha Cellular's agreement on a mutually satisfactory resolution of all issues in this case.

In determining whether the results of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the steps taken by Alpha Cellular to remediate its outstanding violation. After consideration of the proposed Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the proposed Settlement Agreement is in accordance with the law and does not violate any regulatory principle. This Settlement Agreement is in the public interest and results in a reasonable solution of this case.

IT IS THEREFORE ORDERED that:

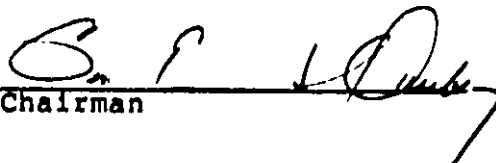
1. The Settlement Agreement is hereby adopted and approved in its entirety as a reasonable resolution to the issues in this

case. Alpha Cellular shall adhere to and comply with all provisions of the Settlement Agreement the same as if individually ordered herein.

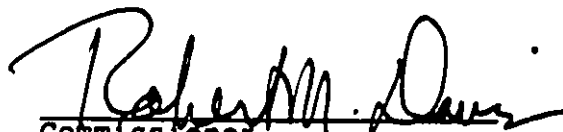
2. Alpha Cellular shall pay the agreed penalty of \$5,000 within 10 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601.

Done at Frankfort, Kentucky, this 11th day of June, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

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**SETTLEMENT AGREEMENT**

1. On February 12, 1993, Alpha Cellular Telephone Company, a Florida General Partnership, ("Alpha Cellular") filed an application with the Commission for a Certificate of Public Convenience and Necessity ("Certificate") to construct a cellular telephone tower in RSA No. 9 in Salyersville, Magoffin County, Kentucky ("Salyersville Site").<sup>1</sup>

2. During its review of Alpha Cellular's application, the Commission discovered evidence suggesting Alpha Cellular had begun construction of the Salyersville Site prior to receiving a Certificate in violation of KRS 278.020.

3. The Commission issued an Order on May 10, 1993 initiating this investigation of Alpha Cellular's alleged violation of KRS 278.020.

4. On May 27, 1993, Commission Staff held an informal conference with an attorney for Alpha Cellular, Frank Chuppe. Mr.

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<sup>1</sup> Case No. 93-024, The Application of Alpha Cellular Telephone Company, a Florida General Partnership, For the Issuance of a Certificate of Public Convenience and Necessity For the Operation and Construction of a Cell Site So As To Enlarge the Coverage of the Kentucky Rural Service Area Which Includes Elliott, Lawrence, Morgan, Magoffin, Johnson, Martin, Floyd and Pike Counties in Kentucky.

Chuppe indicated that Alpha Cellular began construction of the Balyersville Site on or about May 1, 1993, and concluded construction of the site on or about May 10, 1993. Mr. Chuppe admitted Alpha Cellular violated KRS 278.020 by constructing the tower prior to receiving the required Commission approval. He represented the violation occurred due to lack of proper communication among Alpha Cellular employees and between Alpha Cellular employees and the tower contractor.

5. Alpha Cellular and Commission Staff agree that this Settlement Agreement resolves all of the issues involved. Alpha Cellular agrees to pay a penalty of \$5,000 for the violation of KRS 278.020.

NOW, THEREFORE, be it resolved that:

1. Alpha Cellular shall pay a penalty of \$5,000, to be paid in full within 10 days of an Order approving this Settlement Agreement. A certified check for the full amount of the penalty shall be made payable to the Kentucky State Treasurer and delivered to the Office of the General Counsel of the Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601.

2. This Settlement Agreement is submitted only for purposes of resolving the issues related to Alpha Cellular's construction of a cellular telephone tower without Commission authority and is not deemed binding upon the parties hereto in any other proceeding or with respect to any other issues that may arise in this proceeding including, without limitation, any requirement that the Commission issue a Certificate to Alpha Cellular in any proceeding nor is it

to be offered or relied upon in any proceeding involving any other utility.

3. If the Commission issues an order adopting this Settlement Agreement in its entirety, Alpha Cellular agrees that it shall file neither an application for rehearing with the Commission nor an appeal to Franklin Circuit Court from such order.

4. If this Settlement Agreement is not adopted in its entirety, Alpha Cellular reserves the right to withdraw from it and go forward upon all or any matters involved herein, and that in such event the terms of the agreement shall not be deemed binding upon the signatories hereto, nor shall such agreement be admitted into evidence or referred to or relied on in any matter by any signatory hereto.

5. All the parties hereto agree that the foregoing Settlement Agreement is reasonable and in the best interest of all concerned, and urge that this Commission adopt this agreement in its entirety.

AGREED TO BY:

*Frank F. Chuppe*  
Hon. Frank F. Chuppe on behalf of  
Alpha Cellular Telephone Company

*June 7, 1993*  
Date

*Lori H. Planery*  
Hon. Lori H. Planery on behalf of  
Commission Staff

*June 8, 1993*  
Date